

**IN THE INCOME TAX APPELLATE TRIBUNAL,
DELHI BENCH: 'G', NEW DELHI**

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND DR.
BRR KUMAR, ACCOUNTANT MEMBERR**

ITA No. 6165/Del/2018
Assessment Year: 2015-16

Shanti Chemsteel Pvt. Ltd., 204/4 Patel Nagar, Muzaffarnagar (UP)	Vs.	DCIT, Circle- 2, Muzaffarnagar.
PAN :AAICS8818D		
(Appellant)		(Respondent)

Appellant by	Shri Ankit Gupta, Adv.
Respondent by	Shri Umesh Takyar, Sr. DR

Date of hearing	02.03.2022
Date of pronouncement	11.03.2022

ORDER

PER SAKTIJIT DEY: JUDICIAL MEMBER:

Instant appeal has been filed by the assessee assailing order dated 31.07.2018 passed by learned Commissioner of Income-Tax(Appeals), Muzaffarnagar imposing penalty of Rs.13,23,672 under Section 271(1)(c) of the Income-tax Act, 1961 for assessment year 2015-16.

2. Briefly the facts are, assessee is a resident company. For the assessment year under dispute, assessee filed its return of income on 31.10.2015 declaring nil income after set off of loss. As alleged by the Assessing Officer, since the assessee failed to comply with the statutory notices issued under Section 142(1)/142(3) of the Income-tax Act, 1961, he proceeded to complete the assessment under Section 144 of the Act, to the best of his judgment, by making a number of additions. As a result of which, the total income was determined at Rs.73,77,968. The assessee contested the additions made by the Assessing Officer by filing an appeal before learned Commissioner (Appeals). While deciding the appeal, learned Commissioner (Appeals) granted substantial relief to the assessee by deleting most of the additions made by the Assessing Officer. However, while verifying the profit and loss account of the assessee, he noticed that assessee has claimed deduction of interest of Rs.42,83,727 on the OD account with Punjab National Bank. He observed, the said amount, though, had been debited to the account of the assessee, however, it was not actually paid by the assessee during the year. Thus, he issued a show-cause-notice to the assessee to explain why the expenditure claimed should not be disallowed under Section 43B of the Act and the income to that

extent should not be enhanced. Though, the assessee objected to the proposed enhancement, however, learned Commissioner (Appeals) rejecting the objection of the assessee added back the amount of Rs.42,83,727. Based on the addition so made, he initiated proceeding for imposition of penalty under Section 271(1)(c) of the Act, alleging furnishing of inaccurate particulars of income. Ultimately, he passed an order imposing penalty of Rs.13,23,672.

3. Before us, learned counsel for the assessee submitted that though the assessee had challenged the addition made by learned Commissioner (Appeals) by filing a cross objection before the Tribunal, however, while dismissing revenue's appeal due to low tax effect, assessee's cross objection was also dismissed without deciding the issue on merit. However, he fairly submitted that the assessee has not taken any further steps on the order passed by the Tribunal. As regards, the merits of the issue, he submitted, once the interest was debited to assessee's OD account, the OD limit to that extent gets reduced. He submitted, assessee has also increased its liability to that extent in the balance sheet. He submitted, since all information relating to the interest charged on OD account has been furnished, the assessee cannot be accused of furnishing

inaccurate particulars of income. He submitted, at best, the assessee has made a bona fide claim which was not accepted by the revenue. Therefore, no penalty under Section 271(1)(c) of the Act can be imposed.

4. We have considered the rival submissions and perused the material available on record. Undisputedly, assessee has debited the interest charged to its OD account by the bank to its profit and loss account and claimed it as deduction. Undisputedly, while completing the assessment, Assessing Officer has allowed assessee's claim.

5. In course of proceeding before learned first appellate authority, a query was raised as to why the amount should not be disallowed under Section 43B of the Act as it was not actually paid during the year. From the explanation of the assessee and the material placed on record, it is discernible that interest was charged to assessee's OD account by the bank and the assessee had increased its liability to that extent. It is also the submission of the assessee that the OD account limit had been reduced to the extent of interest debited by the bank. To demonstrate this fact, assessee drew our attention to

the ledger account copy. It is a fact on record that learned Commissioner (Appeals) has imposed penalty under Section 271(1)(c) of the Act, alleging furnishing of inaccurate particulars of income. However, facts on record clearly reveal that all material relating to the interest component was furnished before the departmental authority. In fact, learned Commissioner (Appeals) has found the interest on OD account from the profit and loss account of the assessee. Thus, in our considered opinion, the explanation of the assessee that it is a bona fide claim of deduction, appears to be reasonable. It is to be noted that penalty under Section 271(1)(c) of the Act is not automatic. If assessee offers reasonable explanation, then, penalty cannot be imposed. In the facts of the present appeal, in our considered opinion, the deduction claimed by the assessee is not due to any mala fide intention but on a bona fide belief. In any case of the matter, as held by the Hon'ble Supreme Court in case of CIT vs. Reliance Petro Products (322 ITR 82), disallowance of a deduction claimed by the assessee by itself cannot lead to furnishing of any inaccurate particulars of income. Applying the aforesaid legal principle, we hold that it is not a fit case for imposition of penalty under Section 271(1)(c) of the Act. Accordingly, we delete the penalty imposed.

6. In the result, the appeal is allowed.

Order pronounced in the open court on 11th March, 2022

**Sd/-
(DR. BRR KUMAR)
ACCOUNTANT MEMBER**

**Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER**

Dated: 11th March, 2022.

Mohan Lal

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi

Sl. No.	Particulars	Date
1.	Date of dictation (Order drafted through Dragon software):	07.03.2022
2.	Date on which the draft of order is placed before the Dictating Member:	
3.	Date on which the draft of order is placed before the other Member:	07.03.2022
4.	Date on which the approved draft of order comes to the Sr. PS/PS:	07.03.2022
5.	Date of which the fair order is placed before the Dictating Member for pronouncement:	
6.	Date on which the final order received after having been signed/pronounced by the Members:	
7.	Date on which the final order is uploaded on the website of ITAT:	
8.	Date on which the file goes to the Bench Clerk	11.03.2022
9.	Date on which files goes to the Head Clerk:	
10.	Date on which file goes to the Assistant Registrar for signature on the order:	
11.	Date of dispatch of order:	